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REPORT OF THE WORKING GROUP ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Chairman-Rapporteur: Ms. Zagorka Ilić (Yugoslavia)

INTRODUCTION

A. Establishment of the Working Group

1. By resolution 1990/45 the Commission on Human Rights decided to establish at its forty-seventh session an open-ended Working Group to continue the consideration of a draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities and to commence its second reading, following the completion of the first reading of the draft text by the Working Group at the forty-sixth session of the Commission.

2. The Working Group held eleven meetings during the period 4 - 18 February and on 28 February 1991.

3. At its 1st meeting on 4 February, the Working Group unanimously elected Ms. Zagorka Ilić (Yugoslavia) as its Chairman-Rapporteur.

B. Documentation

4. The Working Group had before it the following documents:

(a) Provisional agenda (E/CN.4/1991/WG.5/L.1);

(b) Report of the open-ended Working Group set up by the Commission on Human Rights at its forty-sixth session to consider the drafting of a declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, containing in annex I the text of the draft declaration as adopted in first reading (E/CN.4/1990/41);

(c) Analytical compilation of the comments received in pursuance of paragraph 3 of Commission on Human Rights resolution 1990/45 on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/1991/52 and Add.1);

(d) Technical review, prepared by the Secretariat, of the text of the articles of the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/1991/WG.5/CRP.1);

(e) Analytical compilation of proposals relating to articles 1 and 2 of the draft declaration (E/CN.4/1991/WG.5/CRP.2);

(f) Working papers submitted by Austria (E/CN.4/1991/WG.5/WP.1 and WP.4);

(g) Working paper submitted by the Minority Rights Group (E/CN.4/1991/WG.5/WP.2);

(h) Working paper containing proposals submitted by France, Sweden and the Ukrainian Soviet Socialist Republic (E/CN.4/1991/WG.5/WP.3);

(i) Working paper submitted by the Four Directions Council (E/CN.4/1991/WG.5/WP.5);

(j) Working paper submitted by the Ukrainian SSR (E/CN.4/1991/WG.5/WP.6);

(k) Working paper submitted by France (E/CN.4/1991/WG.5/WP.7);

(l) Working paper submitted by China (E/CN.4/1991/WG.5/WP.8); and

(m) Working paper submitted by Austria (E/CN.4/1991/WG.5/WP.9).

5. In addition the Working Group had before it a number of written proposals for the various draft articles as put together by informal drafting groups. These texts are reproduced in the report.

I. GENERAL DISCUSSION

6. At the suggestion of the Chairman-Rapporteur and in line with the Technical Review prepared by the Secretariat (E/CN.4/1991/WG.5/CRP.1), the Working Group commenced its discussion with two issues affecting the draft declaration as a whole, that is definition of the beneficiaries and the question of individual and/or collective rights.

A. Definition of the beneficiaries

7. Under this heading the history of the debate was brought up and reference was made to the drafting of the Universal Declaration of Human Rights and the numerous subsequent proposals made and listed in a Secretariat compilation (E/CN.4/1987/WG.5/WP.1). There was general agreement that these long-standing problems, as well as similar difficulties encountered in the preparation of national legislation, should not continue to delay the work of the Working Group which should proceed with the drafting on the basis of flexibility and practicality.

8. In the course of this discussion, the delegation of Austria presented the following proposal:

> "For the purposes of the present Declaration, the term 'minority' means a group traditionally living in a State in a non-determinant position, whose members, although nationals of that State, have ethnic, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language."

9. The view was expressed that the present declaration did not necessarily have to contain a definition of the term "minority", as such a definition was absent in other human rights instruments. It was pointed out that the draft, by the use of the adjectives national, ethnic, religious and linguistic in front of the term, already specified what scope it would have and whom it was intended to benefit. An effort should nevertheless be made to clarify the meaning to the degree possible. It was also stated that the declaration could function perfectly well without precisely defining the term as it was clear from its classical meaning to which groups the term referred in concrete cases.

10. Concern was voiced about the addition of national minorities to those listed in article 27 of the International Covenant on Civil and Political Rights. On the one hand, a preference was expressed for focusing on guarantees for national minorities only, because members of ethnic, religious and linguistic minorities should as a matter of existing principles enjoy equality with other citizens of States. It was also stated that there was need to expand on article 27. On the other hand, it was said that it would be difficult or even impossible to set up legal distinctions between national and ethnic groups, that the term "ethnic" probably encompassed "national" and that, in order to avoid confusion in different jurisdictions, a formulation including all these elements should be prepared by the Working Group. During the discussion in second reading of the preambular paragraphs, such a formulation was successfully completed (see below).

B. Individual and/or collective rights

11. The opinion was stated that the rights of individuals, including persons belonging to minorities, were of fundamental importance and should be emphasized in the draft declaration. The protection of all individuals against discrimination and the creation of societies where they could freely enjoy their rights and freedoms was said to be the very essence of the drafting exercise. For these reasons, the phrase "persons belonging to" should be retained in the text of the draft declaration wherever possible.

12. The feeling was also expressed that the groups as such must be protected in order to accomplish the effective protection of their individual members. In this connection, reference was made to General Assembly resolution 217 C of 10 December 1948 concerning the fate of minorities. The wording of article 27 of the Covenant on Civil and Political Rights, that is the collective element contained in the phrase "in community with other members of their group", was mentioned repeatedly as a possible bridge between the individual and collective rights approaches.

13. At the conclusion of this debate, it was proposed that the choice between individual and collective rights was not an absolute one, but would and should

have to depend on the context of the rights, freedoms and duties spelled out in each article of the draft declaration. It was considered likely, upon examination of the contents of each article, that both approaches could be applied in a practical and balanced manner.

II. DISCUSSION ABOUT THE TEXT OF THE DRAFT DECLARATION

A. Title

14. It was suggested that, for reasons relating to ease of reference and simplification, the title of the declaration could be shortened to read "Declaration on the Rights of Minorities" or alternatively "Declaration on the Rights of Persons Belonging to Minorities".

15. In the light of the preceding general discussion about the definition and the question of individual and/or collective rights, it was agreed to postpone the consideration of the wording of the title to a later stage.

16. At its 10th meeting, the Working Group took up consideration of the title of the draft declaration and decided that it read, following the formulation in article 1: "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities".

17. Following the adoption of the title, the delegation of Germany, referring to document A/2929 "Annotations on the text of the draft International Covenants on Human Rights", page 63, placed the following on record:

> "There was some discussion of the meaning of the word 'minorities'. It is our understanding that this term should cover only separate or distinct groups well-defined and long-established on the territory of a State".
>
> "Furthermore it is our understanding that the provisions concerning the rights of minorities should not be applied in a manner as to encourage the creation of new minorities or to obstruct the process of assimilation. Such rights may not be interpreted as entitling any group settled in the territory of a State, particularly under the terms of immigration laws, to form within that State separate communities which may impair its national unity or security."

B. Discussion on the preambular paragraphs

Paragraph 1

18. The text of paragraph 1, as set out in the draft declaration which was adopted in first reading, was adopted without any changes at the 2nd meeting of the Working Group. 1/

Paragraph 2

19. In the course of the debate various comments were forwarded as to which of the expressions opening the paragraph that is "Reaffirming", "Reiterating" or "Declaring", would be the most appropriate. Some delegations suggested

that the expressions "confirming", "stressing" or "firmly reaffirming" should be used in the paragraph instead of the alternatives provided for in the first reading.

20. After a brief discussion it was agreed, at the 2nd meeting, that the word "Reaffirming" is best suited for the purpose of the draft declaration since, as one delegation pointed out, the aim of the draft declaration was to make progress in strengthening the rights of persons belonging to minorities. The square brackets surrounding the word "reaffirming" were deleted, as were the words "Reiterating" and "Declaring". The paragraph was accordingly adopted in second reading. 1/

Paragraph 3

21. It was proposed by one delegation that, observing the fact that this paragraph is of a general nature and not a provision establishing specific rights of minorities, the wording "[concerning the rights of] [persons belonging to] [minorities]" should be deleted. The Working Group approved this proposal and agreed that provisions concerning the specific rights of minorities should be discussed in subsequent paragraphs. In line with proposals made by several delegations, the Working Group decided to substitute the words "contained in" for the phrase "which form the basis of".

22. It was suggested that the following international instruments ought to be added to the list of instruments referred to in this paragraph: the International Covenants on Human Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child. It was pointed out that it is of great importance to stress the continuity between these instruments and the present draft declaration. The Working Group decided to include the above-mentioned instruments in chronological order of adoption. A proposal forwarded by one delegation to include a reference to the Convention on the Elimination of All Forms of Discrimination against Women did not meet with unanimous support in the Working Group.

23. Preambular paragraph 3, as amended, was adopted in second reading at the 2nd meeting of the Working Group. 1/

Paragraph 4

24. Concerning the contents of this paragraph several delegations expressed a preference for the wording "Inspired by", instead of the alternative phrase "Based on". It was stated that the present expression reflects the work of this Working Group in a more appropriate manner. One delegation suggested that the phrase "based on" would be more suitable from a legal point of view. The Working Group decided to amend the paragraph by deleting "[Based on]".

25. The Working Group decided not to add the term "national" to the paragraph since it explicitly refers to article 27 of the International Covenant of Civil and Political Rights where the term is not employed.

26. One delegation suggested including in the paragraph a reference to the language employed by the Commission on Human Rights in the report on its third session (E/259) whereby the Sub-Commission on Prevention of Discrimination and Protection of Minorities was established. Another delegation proposed a

reference to General Assembly resolution 217 C of 10 December 1948, but the Working Group decided that this paragraph should only contain a reference to article 27 of the International Covenant on Civil and Political Rights.

27. Preambular paragraph 4, as amended, was adopted in second reading at the 3rd meeting of the Working Group. 1/

Paragraph 5

28. Several delegations proposed that the term "national" should be included in the enumeration of the kinds of minorities encompassed by this paragraph. Having considered the various explanations described elsewhere in this report, the Working Group decided to delete the square brackets surrounding the phrase "national".

29. One delegation asked if the inclusion of the term "national" in this paragraph would mean that the term was to be accepted for use throughout the draft declaration. The Working Group decided that the expression "national, ethnic, religious or linguistic" would be used throughout. The text and the paragraph was so adopted at the 2nd meeting of the Working Group. At the 5th meeting of the Working Group, it was decided, after having considered a proposal submitted by one delegation, to replace the expression "national, ethnic, religious or linguistic minorities" by the expression "national or ethnic, religious and linguistic minorities" in all provisions of the draft declaration. 1/

30. The delegation of France requested that the following declaration be recorded:

> "France does not recognize on its territory the existence of groups whose particular features are based on racial, linguistic and religious criteria. France's ideas are based on a universal principle: 'All human beings are born free and equal in dignity and in law'. The French Constitution draws on this principle, and under the Constitution all citizens of the Republic, which is one and indivisible, are equal before the law.
>
> "The unity of the French people and the equality of citizens rule out any possibility of a distinction based on ethnic criteria. As far as religion and language - other than the French language - are concerned, they are a matter of choice for each individual. The French Government would point out that these two areas fall within the purview not of public law but of the private exercise of public freedoms by citizens. The role of the secular State is simply to ensure that citizens have full and free use of religion and language within the framework defined by law, and in respect for everyone's rights.
>
> "The French reservation to article 27 of the International Covenant on Civil and Political Rights stems from these principles.
>
> "It has not escaped the French Government that the draft declaration contains no definition of the expressions 'national minorities', 'religious minorities', 'linguistic minorities' or 'ethnic minorities'. We understand this hesitation: the problem is a difficult one to overcome. At a time when many countries are struggling against

manifestations of hatred, racism and xenophobia, when newer States are experiencing internal civil conflict, to identify or to pinpoint such and such a group on the basis of its local language, even though the members of the group show varying interest in using it, or on the basis of its religion, or still more its race, does not seem to be a factor to ease tension.

"It seems to us that, to avoid dangerous combinations, the Working Group should weigh up the possibility of focusing its concern on national minorities; there are, as my country is fully aware, communities whose members have a specific cultural, linguistic and religious heritage, in given regions and which, in the light of particular historical circumstances, have manifested their existence as 'national minorities'. The linguistic, or the religious, or the ethnic, criterion cannot suffice. We should set our sights on guaranteeing for persons belonging to national minorities, the presence of which on a given territory is historical, the requisite conditions for protection of their identity, so that they can effectively exercise, without discrimination, their rights and freedoms as persons; we should, above all, in this way make a proper contribution to an appraisal of the ways and means of preventing, reducing or resolving tensions that might arise, in some regions of the world, from the historical existence of national minorities, whose members rightly demand preservation of their identity.

"Generally speaking, any reference to the collective rights of minorities should be removed. The declaration should be intended to promote the rights of persons and the formula 'rights of persons belonging to ... minorities', in paragraphs 3, 5, 6, 7, 8, 9 and 10 of the preamble and articles 1, 2, 3, 4, 5, 6 and 7 of the declaration, as well as in the resolution submitting the report of the Working Group, should be retained.

"In view of the reservation concerning article 27 that France entered when it ratified the Covenant on Civil and Political Rights: 'In the light of article 2 (1) of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the French Republic is concerned', it requests that, in paragraph 4 of the preamble, the expression 'Inspired by the provisions of article 27 (and not 'Based on') should be retained.

"Above all, in France's opinion, the formula 'national minorities' would alone satisfactorily reflect the purpose of the declaration, since the religious, linguistic or ethnic criteria are not, taken on their own, sufficiently meaningful."

Old paragraph 6

31. At the 3rd meeting of the Working Group, with reference to similar contents in subsequent operative paragraphs, it was decided to delete paragraph 6 as adopted in the first reading.

New paragraph 6

32. The new paragraph 6 (paragraph 7 of the draft declaration as adopted in first reading) was discussed and adopted in second reading at the 3rd meeting of the Working Group, with the amendment described below. 1/

33. The Working Group focused its attention on the wording "within the constitutional framework". It was stated that this phrase could be seen as contrary to the purposes of the draft declaration and that it could be interpreted as favouring interests of States rather than the protection of the rights of minorities. The proposal to delete the original wording met with general agreement. During the ensuing debate it was suggested that these concerns would be satisfied by replacing the words "within the constitutional framework" by "within the legal and democratic framework", or by "within a democratic framework based on the rule of law". The latter formulation was agreed upon by the Working Group.

New paragraph 7

34. During the debate on paragraph 4, the delegation of Austria had suggested that a reference to General Assembly resolution 217 C of 10 December 1948 should be included in that paragraph. The Working Group decided not to include this reference in paragraph 4, but it was generally agreed that the contents of resolution 217 C could be reflected in a new preambular paragraph without any explicit reference to the resolution itself.

35. The delegation of Austria submitted to the Working Group a proposal on the text of a new preambular paragraph (E/CN.4/1991/WG.5/WP.1): "Considering that the United Nations cannot remain indifferent to the fate of minorities". In the course of the discussion that followed it was pointed out that the expression "cannot remain indifferent" was out of date. The expression, originally used in the 1948 resolution, had since lost its relevance as the United Nations had not remained indifferent to the fate of minorities, a fact which is reflected by the numerous provisions on minority rights contained in various international instruments. The Working Group arrived at agreement that the wording "has an important role to play" would be more suitable for reflecting the present situation. The Working Group also decided to replace the words "to the fate" with the words "regarding the protection" as the former were found too vague and, as indicated by one delegation, implied "wishful thinking".

36. The text of the new paragraph 7 was adopted at the 3rd meeting of the Working Group. 1/

Paragraph 8

37. A suggestion was put forward by one delegation to insert the words "other regional intergovernmental forums and" before the words "the other bodies established". In this connection, several delegations proposed to mention also the work done by non-governmental organizations. After discussing these proposals the Working Group agreed on including a reference to the work carried out by intergovernmental and non-governmental organizations in an additional paragraph. An informal drafting group was established in order to draft such a new paragraph.

38. At its 5th meeting the Working Group adopted this paragraph and, in accordance with its previous decision of the same meeting, substituted the wording "national or ethnic, religious and linguistic minorities" for "national, ethnic, religious or linguistic minorities". 1/

New paragraph 9

39. As mentioned above, the Working Group considered a new preambular paragraph which should follow paragraph 8. The text was submitted by the Minority Rights Group in document E/CN.4/1991/WG.5/WP.2. The text read as follows:

> "Recognizing the importance of the contributions made and efforts undertaken by intergovernmental and non-governmental organizations in promoting and protecting the rights of minorities."

40. Most delegations welcomed with satisfaction the principle of such a paragraph, thus encouraging the positive input of intergovernmental and non-governmental organizations on the subject-matter. It was underlined, however, that it was necessary to maintain in the preamble a balance between the efforts of States and those of the above-mentioned organizations. Some delegations stressed the need to refer also, if not exclusively, to the "rights of persons belonging to minorities", although other delegations explained that referring in the preamble to "the rights of minorities" in its general sense would not imply the allocation of groups rights to minorities. Opposition was expressed to the reference to "the rights of minorities" unless the term "national" were to be added.

41. One delegation forwarded a new draft text which read: "Taking also into account the important work which is carried out by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to minorities."

42. As to the enumeration of the kinds of minorities which the paragraph would refer to, the Working Group agreed to make use of "national or ethnic, religious and linguistic", although one delegation opposed the mentioning of the term "national". Along the same line, a delegation pointed out that this expression should be used in the title of the declaration as well. At the same meeting, the Working Group decided to use this expression in all preambular paragraphs adopted in second reading.

43. At its fifth meeting, the Working Group accordingly adopted the following text:

> "Taking also into account the important work which is carried out by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities."

44. The representative of Greece reserved her position that the words "protecting minorities and" should be deleted from the new preambular paragraph 9, because they were redundant, once this paragraph was already referring expressis verbis to "promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities". She repeated that this position was even reaffirmed after the clarifications

advanced by the delegation of the United States of America, France, Belgium and the previous statements already made by many others, including representatives from the non-governmental organizations, that the addition of the words "protecting minorities", besides the phrase "promoting and protecting the rights of persons belonging to ... minorities", was by no means suggesting the granting of rights also to the minority group as such (besides the individuals who happen to be the members of a minority group) but was only meant to praise and encourage the work done by the intergovernmental and non-governmental organizations.

Paragraph 10

45. Concerning old paragraph 9 which now becomes the tenth one, it was proposed to substitute "relating to" for "with regard to". The Working Group agreed on this proposal. Taking into account the decision of the Working Group at its fifth meeting concerning the enumeration of minorities, which applies mutatis mutandis to this paragraph, the Working Group adopted paragraph 10 at its fifth meeting. 1/

Paragraph 11 (original paragraph 10)

46. Following its previous decision relating to the title (see above) the Working Group adopted this paragraph in accordance with the formulation agreed upon by the Working Group as to the title of the draft declaration. 1/

C. Discussion on the operative articles

Article 1

47. The Working Group debated the contents of article 1 at its 5th, 6th, 7th, 8th and 9th meetings.

48. At the 5th meeting, the delegation of Sweden proposed a new article before article 1 as adopted in first reading. The aim of this new article would be to enlighten the notion of "minorities" as used in this draft declaration, and to facilitate the use of the expression "persons belonging to national or ethnic, religious and linguistic minorities" by replacing it by the expression "persons belonging to minorities". The proposed text read as follows:

> "For the purposes of this declaration, persons belonging to minorities means persons belonging to national or ethnic, religious and linguistic minorities, acting individually as well as in community with other members of their group."

49. Welcoming the Swedish proposal, the delegation of the Ukrainian SSR amended it, for the purpose of clarification, by the following text:

> "Paragraph 1: For the purposes of this declaration, persons belonging to minorities means persons belonging to national or ethnic, religious and linguistic minorities.
>
> Paragraph 2: Persons belonging to minorities can exercise and enjoy their rights individually as well as in community with others members of their group."

50. The delegation of Belgium proposed the substitution of the words "all individuals" for the word "persons".

51. The delegation of France proposed to add a third paragraph to the article which read as follows:

> "Paragraph 3: No disadvantage can result for a person belonging to a minority from the exercise or non-exercise of those rights."

52. These proposals are reproduced in document E/CN.4/1991/WG.5/WP.3.

53. In the course of the debate on these proposals one delegation suggested that the question of individual and/or collective rights ought to be discussed in this context, and expressed its preference for defining the rights discussed here as collective rights. This view was opposed by several delegations. It was stated that the contents of this new article should be understood as a possible compromise on the question of individual and collective rights, and on that of the definition of their beneficiaries. One delegation stressed that the term "community" should be understood as referring only to groups of individuals, and not to organizations. Another delegation underlined that the French proposal for paragraph 3 should be written in plural rather than in singular style, as follows:

> "No disadvantage can result for persons belonging to minorities from the exercise or non-exercise of their rights."

54. A delegation pointed out as a procedural matter, that the second reading should not be based on new articles, but on the text adopted in first reading. Having had a debate on this issue, the Working Group agreed that the second reading did not exclude new proposals, a fortiori, when they aimed at enlightening forthcoming articles, but the Working Group should mainly work on the basis of the text adopted in first reading.

55. In this connection, one delegation suggested reading the proposal of the new article as an amendment to the original article 1. This question was examined by an informal working group which proposed the following amended text (informal drafting paper of 12 February 1991):

> "Article 1 (as amended):
>
> Persons belonging to national or ethnic, linguistic and religious minorities (hereinafter referred to as persons belonging to minorities) can exercise and enjoy their rights individually as well as in community with other members of their group without any discrimination.
>
> Article 2 (as amended):
>
> 1. In accordance with the Charter of the United Nations and other relevant international instruments, national or ethnic, religious and linguistic minorities shall be protected against any activity which:
>
> (i) May threaten their existence or identity;
>
> (ii) Interferes with the development of their own characteristics;

2. All States shall undertake to adopt legislation or other appropriate measures to prevent and combat such activities, with due regard to the principles embodied in this Declaration and in the Universal Declaration of Human Rights."

56. It was proposed to add the French proposal as paragraph 2 to article 1 as amended by the informal working group.

57. The delegation of Austria submitted a new proposal for article 1 (E/CN.4/1991/WG.5/WP.4) which read as follows:

"Article 1

(1) The promotion of the national, ethnic, cultural, linguistic and religious identity of minorities must be protected.

(2) Persons belonging to national, ethnic, cultural, linguistic and religious minorities can exercise the right to life, liberty and security of person and all other human rights and freedoms individually as well as in community with other members of their group without discrimination.

(3) No disadvantage can result for a person belonging to a minority from their exercise or non-exercise of those rights."

58. The contents of paragraph 1 of the Austrian proposal met the support of several delegations. However, it was suggested that it should be discussed in connection with subsequent articles. The delegation of Austria withdrew paragraph 1 from the proposed text of article 1 and offered it for consideration under article 2, paragraph 1.

59. At the 7th meeting a new proposal by an informal drafting group was introduced (informal proposal of 13 February). The proposal read as follows:

"Article 1 as amended:

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) can exercise their rights as set forth in the Declaration individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage can result for persons belonging to minorities from the exercise or non-exercise of those rights.

Article 2 as amended

1. In accordance with the Charter of the United Nations and other relevant international instruments, national or ethnic, religious and linguistic minorities shall be protected against any activity which:

(i) May threaten their existence or identity;

(ii) Interferes with the development of their own characteristics.

2. In accordance with relevant norms of international law and within a democratic framework based on the rule of law, all States shall adopt legislative or other appropriate measures to prevent and combat such activities, with due regard to the principles embodied in this Declaration.

Article 3 as amended (only first paragraph that should be followed by the current paragraph of the existent draft).

1. Persons belonging to minorities have the right to respect for, and the promotion of, their national or ethnic, cultural, religious and linguistic identity without any discrimination."

60. The Working Group agreed to base its considerations of article 1 on the text submitted by the informal group on 13 February. Following a suggestion by one delegation, the word "can" was replaced by the word "may" in both paragraphs of the article. After a discussion on the merits of the expression "exercise and enjoy" in paragraph 1, it was agreed that the word "exercise" sufficiently expressed the intentions of this article and a decision to delete the phrase "and enjoy" was taken. Some delegates suggested replacing the phrase "as set forth" by either "referred to" or "including those set forth". The latter met with the approval of the Working Group. A suggestion was made to add the following phrase at the end of paragraph 1: "with due regard to the principles set out in article 26 of the International Covenant on Civil and Political Rights". Several delegations expressed their support for making a reference to the notion of equality before the law contained in that article. The Working Group arrived at agreement that no explicit reference to article 26 of the Covenant on Civil and Political Rights be inserted in the present article, it was agreed that the concept of "equality before the law" should be discussed under subsequent provisions of the draft declaration.

61. Paragraph 1 of article 1, as amended, was adopted in second reading at the 7th meeting of the Working Group. 1/

62. In the course of the discussion on paragraph 2 one delegation strongly opposed the use of the word "disadvantage". It was stated that the word is very ambigious and could cause problems of interpretation. The same delegation stressed that it could accept technical changes of amendments to the text adopted at first reading, but would not be prepared to go along with new substantive elements thereto. As to the concept contained in this paragraph it held the view that it was not substantiated in article 1 as adopted in first reading, and should, therefore, not be debated at the second reading. Several delegations pointed out that this paragraph was meant as a clarification of the notion of "non-discrimination" contained in paragraph 1, and that the ideas expressed here were not new ones; they were already expressed in article 5, paragraph 2, as adopted in first reading.

63. At the 8th meeting the delegation of France in an attempt to reach a compromise, submitted a proposal of a new additional paragraph to article 5 (E/CN.4/1991/WG.5/WP.7), which read:

"New additional paragraph to article 5

Persons belonging to minorities may choose freely to exercise or not to exercise their rights, individually or in community with other members of their group."

64. The French delegation explained that the use of the wording "no disadvantage" was avoided. It suggested putting this proposal in article 5.

65. Following suggestions from several delegations, the Working Group agreed to delete the last part of the French proposal: "individually or in community with other members of their group" since this issue was set in paragraph 1 of this article.

66. Various objections were raised to the contents of the remaining part of this proposal. One delegation stated that it was very similar to paragraph 1 of article 1 and therefore did not seem to serve any purpose. Some delegations stressed the importance of having a reference to the concept of "no disadvantage". Several proposals to replace this expression were offered for consideration. One suggestion was to keep the phrase "may choose freely" and to insert, after the word "rights", the phrase "without any legal penalties". One delegation stated that there was no fundamental substantive difference between the expressions "no disadvantage" and "choose freely", thus, for the sake of compromise, the latter could be accepted. The following proposals were also examined by the Working Group: "without any penalties", "without being penalized", "without being penalized in any way" and "without any legal implications". One delegation suggested amending the text of article 1, paragraph 2, as proposed in the informal proposal of 13 February by replacing the expression "no disadvantage" by the expression "no negative consequences". Another delegation stated that the notion of "no disadvantage" was covered by the expression "without discrimination" in paragraph 1 of this article and suggested the deletion of paragraph 2. As the Working Group did not arrive at agreement on any of these proposals, it referred the subject-matter to an informal drafting group.

67. At the 9th meeting the informal group presented its proposal for a new paragraph to be included in article 5. The proposal read as follows:

> "They may choose freely to exercise or not exercise these rights."

68. It was stated that this proposal, which was an amendment to the proposal presented in WP.7, was meant as an attempt to find a compromise on the problem discussed. After considering this text the Working Group agreed to replace the word "they" by the phrase "persons belonging to minorities" and to substitute "the rights set forth in this Declaration" for "these rights". The proposal, as amended, read as follows:

> "Persons belonging to minorities may choose freely to exercise or not exercise the rights set forth in this Declaration."

69. The Working Group adopted this sentence on the understanding that it be included in article 5 and that amendments to it should remain possible.

Article 2

70. The Working Group considered article 2 at its 7th to 10th meetings.

71. In the outcome of the debate on article 1, the Working Group agreed to take the following texts into account as possible proposals for article 2:

(a) "Article 2

1. In accordance with the Charter of the United Nations and other relevant international instruments, national or ethnic, religious and linguistic minorities shall be protected against any activity which:

(i) May threaten their existence or identity;

(ii) Interferes with the development of their own characteristics.

2. All States shall undertake to adopt legislative or other appropriate measures to prevent and combat such activities, with due regard to the principles embodied in this Declaration and in the Universal Declaration of Human Rights."

(b) "Article 2

1. In accordance with the Charter of the United Nations and other relevant international instruments, national or ethnic, religious and linguistic minorities shall be protected against any activity which:

(i) May threaten their existence or identity;

(ii) Interfere with the development of their own characteristics.

2. In accordance with relevant norms of international law and within a democratic framework based on the rule of law, all States shall adopt legislative or other appropriate measures to prevent and combat such activities, with due regard to the principles embodied in this Declaration."

72. At the 7th meeting, the delegation of Austria suggested replacing paragraph 1 of the proposal (a) by the text of paragraph 1 of article 1 as proposed by Austria in WP.4. This text, which was subsequently orally amended, read as follows:

1. "The national, ethnic, cultural and linguistic identity of minorities must be protected and promoted."

73. In the course of the discussion on this proposal it was stated that the concept of protecting the existence of minorities should be included. At the 8th meeting a new proposal for article 2 was submitted, which read as follows:

"1. The national or ethnic, cultural, religious and linguistic identity of minorities shall be protected. Conditions for the promotion of their identity shall be encouraged.

2. In accordance with relevant norms of international law and within a democratic framework based on the rule of law, States shall adopt appropriate legislative or other measures to these ends."

74. Commenting on this proposal, several delegations expressed their approval of the text. However, other delegations pointed out that they preferred to see a reference to the protection of the existence of minorities in the paragraph. The delegation of the Four Directions Council subsequently submitted a new proposal (E/CN.4/1991/WG.5/WP.5), which read as follows:

> "No State shall deny the existence of a national or ethnic, religious or linguistic minority, or disrupt its physical integrity."

75. The delegation of Ukrainian SSR submitted a proposal (E/CN.4/1991/WG.5/WP.6) which reads:

> "Article 2.2
>
> National or ethnic, cultural, linguistic and religious identity of minorities shall be protected and conditions for the promotion of that identity shall be created."

76. The new proposals received the support of several delegations. However, no general agreement could be reached in the Working Group. As an attempt to find a compromise solution, the delegation of China submitted a proposal (E/CN.4/1991/WG.5/WP.8), which read:

> "Article 2
>
> 1. In accordance with the Charter of the United Nations and other relevant international instruments, the national or ethnic, cultural, religious and linguistic identity of minorities shall be protected.
>
> 2. In accordance with their respective constitutional processes and in accordance with the relevant international treaties to which they are parties, all States shall adopt appropriate legislative or other measures and encourage the conditions to these ends."

77. This proposal was welcomed by the majority of delegations, and the Working Group agreed to base its debate of article 2 on this text. One delegation proposed to add the word "promoted" after the word "protected" in paragraph 1, and to add the text of WP.5 as a second sentence to this paragraph. The same delegation suggested replacing the expression "and encourage the conditions of these ends" by the expression "to promote the conditions necessary to achieve these ends", in paragraph 2. Another delegation suggested inserting, after the word "protected" in paragraph 1, the expression "and conditions for the promotion of that identity shall be created". It was further proposed to replace the words "the Charter of the United Nations" by "the principles of the Charter of the United Nations".

78. After a debate on the amendments, one delegation proposed the following text for paragraph 1:

> "The State shall protect and promote the national or ethnic, cultural, religious and linguistic existence and identity of minorities in respect of the principles of the Charter of the United Nations and other relevant international instruments."

79. This proposal was subsequently amended to read as follows:

> "The State shall protect and promote the national or ethnic, cultural, religious and linguistic existence and identity of minorities consistent with the principles of the Charter of the United Nations and other relevant international instruments."

80. It was pointed out by some delegations that a reference to the principles of the United Nations was already included in article 5, paragraph 3, as adopted in first reading, and since the purpose of the second reading is, inter alia, to avoid overlapping of provisions the reference to the Charter of the United Nations should be deleted from the text of this article. One delegation proposed the wording "within their respective territory" to be inserted in the text. The text was amended to read:

> "States shall protect and promote the national or ethnic, cultural, religious and linguistic existence and identity of the minorities within their respective territories."

81. Objecting to the formulation of the proposed amendment, one delegation stated that the purpose of this draft declaration was to create rights for minorities and not to create obligations for States. This delegation proposed the following text of paragraph 1:

> "National or ethnic, cultural, religious and linguistic minorities are entitled to the protection of their existence and identity."

82. The Working Group adopted, at its 9th meeting, the following text of article 2, paragraph 1:

> "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities, within their respective territories, and shall encourage conditions for the promotion of that identity."1/

83. At the same meeting, the Working Group began consideration of paragraph 2 of article 2. It had before it the proposals mentioned below which took into account various amendments and suggestions made in the course of the debate on the proposed texts of paragraph 2. The first proposal was submitted by the delegation of Austria (E/CN.4/1991/WG.5/WP.9), which reads as follows:

> "2. States shall adopt appropriate legislative or other measures to achieve those ends, with due regard to the principles of this Declaration and the principles embodied in the Universal Declaration of Human Rights."

84. A second text was submitted by an informal drafting group, reading:

> "In accordance with their respective constitutional processes, States shall adopt appropriate legislative or other measures, with due regard to the principles embodied in this Declaration, and in the Universal Declaration of Human Rights and without infringement of the rights of other citizens of the State."

85. The latter proposal was orally amended by one delegation to include the expression to "achieve these ends" after the words "measures". It was suggested that the word "and" be substituted for the word "or" in the expression "legislative or other measures". The Working Group decided to replace the expression "In accordance with" by the expression "Acting through", and adopted the latter as the opening phrase of this paragraph.

86. Several delegations opposed the reference to "constitutional processes". The view was expressed by some delegations that the phrase would constitute a limitation to the rights of minorities, while other delegations felt that "constitutional processes" would serve to safeguard these rights. As a possible compromise it was suggested that the phrase "and in accordance with the relevant international treaties to which they are parties" be inserted after "constitutional processes". Another suggestion proposed replacing the latter by "legal systems". It was also suggested that the paragraph should contain reference to both "constitutional processes" and "legal systems". One delegation suggested deleting the text preceding the word "States", as well as the text after the words "Human Rights".

87. Expressing concern that the present text of paragraph 2 could make article 2 restrictive, some delegations proposed not considering this text under article 2, but coming back to it in connection with article 6, which might be more pertinent to the issue. Some other delegations, however, felt that article 2 required a paragraph referring to implementation measures.

88. Due to lack of consensus on the above-mentioned issue, the Working Group decided to set aside this paragraph for the time being and return to this matter at the next session.

Article 3

89. At the 10th meeting the Working Group began consideration of article 3. One delegation suggested deleting the square brackets surrounding the words "persons belonging to" in the text of paragraph 1 as adopted on first reading. On the understanding that the provisions of article 1, paragraph 1, as adopted in second reading, were applicable to the entire draft declaration. For the same reason, this delegation further suggested the deletion of the expression "individually or in community with the other members of their group".

90. Another delegation proposed to inserting phrase "to carry out their own educational activities" before the expression "to enjoy their own culture". This amendment did not find general agreement. Some delegations pointed out that reference to education was already contained in paragraph 2 of article 3, as well as in article 6 of the draft declaration. This matter should therefore be considered in connection with the discussions of these provisions.

91. Due to lack of time, it was decided to defer discussion of both matters until a subsequent session of the second reading.

Future work

92. Following a recommendation of the Chairman-Rapporteur, the Working Group agreed to recommend to the Commission a two-week intersessional session at the beginning of December 1991 in order to enable it to complete its second reading.

93. It was further agreed to take up all the issues left aside at the present session. The delegation of China expressed the opinion that work should commence at the Working Group's next session with article 2, paragraph 1.

94. At the Working Group's 11th meeting on 28 February 1991, the present report was adopted unanimously.

Note

1/ The text of the draft declaration adopted in second reading is reproduced in annex I.

Annex I

TEXT OF THE DRAFT DECLARATION AS ADOPTED IN SECOND READING

Draft declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion.

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and co-operation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking also into account the important work which is carried out by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Article 1

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) may exercise their rights including those as set forth in this Declaration individually as well as in community with other members of their group, without any discrimination.

Article 2

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities, within their respective territories, and shall encourage conditions for the promotion of that identity.

Annex II

TEXT OF THE DRAFT DECLARATION WHICH REMAIN
TO BE ADOPTED IN SECOND READING
[E/CN.4/1990/41, Annex I]

Article 3

1. [Persons belonging to] minorities have the right, individually or in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language, freely and without interference or any form of discrimination.

2. All States [which have not yet done so] shall [take measures to create favourable conditions to enable [persons belonging to] minorities to freely]/[ensure that [persons belonging to] minorities are freely able to] express their characteristics, to develop their [education,] culture, language, religion, traditions and customs, and to participate on an equitable basis in the cultural, religious, social, economic and political life in the country where they live.

3. To the same ends, persons belonging to minorities shall enjoy, without any discrimination, the right to establish and maintain contacts with other members of their group [and with other minorities], especially by exercise of residence within the borders of each State, and the right to leave any country, including their own, and to return to their countries. [This right shall be exercised in accordance with national legislation and relevant international human rights instruments.]

Article 4

1. All States shall take legislative or other appropriate and effective measures, especially in the fields of teaching, education, culture and information, to promote and protect the human rights and fundamental freedoms of [persons belonging to] minorities.

2. Such measures shall include facilitation of the enjoyment by [persons belonging to] minorities of their freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, in particular through utilization of all forms of communication. [This freedom shall be exercised in accordance with national legislation and relevant international human rights instruments.]

3. Such measures should also include the exchange of information [and experience] among States in the aforementioned fields, with a view to strengthening mutual understanding, tolerance and friendship among all people, including [persons belonging to] minorities, [as well as to develop further friendly relations and co-operation among States in accordance with the Charter of the United Nations.]/[as well as to develop further international co-operation in the spirit of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.]

Article 5

1. Nothing in this Declaration shall prevent the enjoyment of international obligations of States in relation to [persons belonging to] minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. This Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations and, in particular, contrary to the sovereignty, territorial integrity and political independence of States.

4. In exercising their rights [persons belonging to] minorities shall respect the universally recognized human rights and fundamental freedoms of others.

[Article 6

Member States of the United Nations shall endeavour, depending on their specific conditions, to create favourable political, educational, cultural and other conditions and to adopt adequate measures for the protection and promotion of the rights of minorities proclaimed in this Declaration.]

Article 7

(a) [Persons belonging to] [national,] ethnic, religious or linguistic minorities have the right to preserve their identity, and to participate effectively in the affairs of the State, and in decisions concerning the regions in which they live [through national institutions and, where possible, regional institutions].

(b) National policies and programmes, as well as programmes of international co-operation and assistance shall be planned and implemented with due regard for their legitimate interests.

Article 8

The organs and specialized agencies of the United Nations system shall contribute to the full realization of the rights and principles set forth in this Declaration, within their respective fields of competence.

New article

This Declaration shall be carried out in a spirit of mutual understanding, tolerance, [good neighbourliness] and friendship among States and [all peoples]/[peoples] and [national], racial, ethnic, religious and linguistic groups in conformity with the purposes and principles of the United Nations.

To be included within a resolution accompanying the Declaration

(i) The Secretary-General shall organize regional and global technical meetings to stimulate an exchange of experience in this field among governments and with the people affected by this Declaration;

(ii) The Sub-Commission on the Prevention of Discrimination and Protection of Minorities shall undertake annually a review of the national and international measures which have been taken for the implementation of this Declaration, and report on the problems encountered and progress achieved;

(iii) States shall provide, as far as possible, information on the identity, numbers, location, organization, and social and economic characteristics of minorities in their reports to bodies established under United Nations conventions in the field of human rights;

(iv) United Nations organs and specialized agencies shall give special consideration to requests for technical co-operation and assistance that are designed to achieve the aims of this Declaration.